

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHILDREN'S HEALTH DEFENSE,

Plaintiff,

v.

FACEBOOK INC., *et al.*,

Defendants.

Case No. [20-cv-05787-SI](#)

**ORDER DENYING PLAINTIFF'S  
MOTION TO STAY JUDGMENT**

Re: Dkt. No. 111

Plaintiff Children's Health Defense ("CHD") has filed a motion to stay the judgment as to defendant Science Feedback, or alternatively for an indicative ruling. The motion is scheduled for a hearing on September 3, 2021. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is suitable for resolution without oral argument and VACATES the hearing. For the reasons set forth below, the Court DENIES the motion.

This case was filed on August 17, 2020. In an order filed June 29, 2021, the Court granted the motions to dismiss the second amended complaint filed by defendants Facebook, Mark Zuckerberg, and Politifact. The Court also dismissed without prejudice plaintiff's claims against defendant Science Feedback, finding that the record reflected that Science Feedback had neither been served nor appeared in this case. On June 30, 2021, the Court entered judgment, and on July 20, plaintiff filed a notice of appeal.

On July 27, 2021, a week after it appealed, plaintiff filed the instant motion to stay the judgment of dismissal without prejudice as to defendant Science Feedback under Federal Rule of Civil Procedure 62(h), or alternatively for an indicative ruling under Federal Rule of Civil Procedure

62.1. CHD has submitted what it asserts is credible evidence<sup>1</sup> of its diligence and expense constituting good cause to extend the time for foreign service of this French corporate defendant *nunc pro tunc* to June 24, 2021. CHD also seeks an order for equitable tolling of the statute of limitations for its claims against Science Feedback from August 17, 2020, when the original complaint was filed, until such time as a mandate issues from the Ninth Circuit Court of Appeals. In the alternative, CHD requests an indicative ruling from the Court “as to how it would rule on these issues should the Ninth Circuit remand for that limited purpose.” Mtn. at 15.

The Court concludes that it cannot grant the relief requested by CHD because CHD’s motion is too late. CHD states that it received the documents related to service on July 15, prior to the date that CHD filed its notice of appeal. CHD should have requested relief from this Court before filing the notice of appeal. Once CHD filed a notice of appeal of the June 29 order and June 30 judgment, this Court was divested of jurisdiction “over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The appealed order and judgment address CHD’s claims against Science Feedback, and thus those matters are now before the Ninth Circuit. In addition, the Court concludes that the requested indicative ruling under Federal Rule of Civil Procedure 62.1 is not appropriate because, *inter alia*, the Court cannot make findings about attempted service on Science Feedback based on the present record.

**IT IS SO ORDERED.**

Dated: August 30, 2021



SUSAN ILLSTON  
United States District Judge

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<sup>1</sup> CHD states that on July 15, it received an “Attestation of Service” from the French Ministry of Justice, as well as related documents relating to service, showing that on June 24, 2021, “an officer of the French Ministry of the Interior, acting on CHD’s submission under the terms of the Hague Convention . . . attempted to effect service on Science Feedback.” Mtn. at 2.